IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8266 OF 2004

Bandu Gopal Patil .. Petitioner.
Vs.
Krishna Gopal Patil & Ors. .. Respondents.

Mr.G.N.Salunke for the petitioner.
Mr.N.V.Bandiwadekar for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 26TH OCTOBER, 2004

P.C.:

. Heard Mr.Salunke, learned counsel for the petitioner and Mr.Bandiwadekar, learned counsel for the respondent.

2. The only contention urged by Mr.Salunke, learned counsel for the petitioner is that under any circumstances the defendant no.2 cannot be compelled to give evidence at the instance of the respondent-plaintiff. In the instant case by the impugned order dated 14.9.2004 the Court has appointed Court Commissioner to record evidence of defendant no.2 - Jayabai Gopal Patil. The written statements filed by petitioner-defendant no.1 and defendant nos.2 to 5 are independent. Defendant

No.2 has not made any grievance against the order impugned in the present writ petition. It, therefore, does not lie in the mouth of the defendant no.1-petitioner that the defendant no.2 is being compelled to give oral evidence in the case at the instance of the plaintiff. The judgment relied upon by Mr.Salunke in **Pirgonda Hongonda Vs. Vishwanath Ganesh & Others AIR 1956 Bombay 251** is of no avail to the petitioner in view of the peculiar facts and circumstances of the case. The petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)